

April 26, 2006

REPORT (TELEPHONE CONFERENCE) REGARDING AMERICAN INDIAN PROBATE REFORM ACT

NCAI hosted a conference call today on possible amendments or technical corrections to AIPRA based upon the comments submitted on the probate regulations. Six issues were forwarded by email for today's conference call.

1. delay the current implementation date of June 20, 2006. Specific concerns with the June 20, 2006 implementation date included unclear title information until restoration or resolution of the "Youpee" interests. Without clear title information, implementing provisions of AIPRA regarding interests of 5% or less will likely result in error. Example: a current 4% interest is available for purchase at probate without consent and can pass under the single heir rule, but with the additional 2% "Youpee" interest would then become a 6% interest and not subject to the purchase at probate without consent or pass by the single heir rule. Other concerns included Tribes not being prepared with a full understanding of AIPRA, insufficient time to develop approvable probate codes and backlog in recording title data for completed probates.

David Mullan stated that it was not likely that the Secretary of Interior would withdraw the certification to implement AIPRA. Withdrawal would indicate that notice of implementation was not proper which is the purpose of certification. David did not believe Interior Solicitors would advise the Secretary to withdraw the certification. The other option is for Congress to take action. David states that the request to delay implementation must come from a consensus position from Indian country and must occur very quickly. He cautions that this request will be very late – since implementation is two months away. Additionally, he states the position of DOI on the delay request will be critical. He recommends that Tribes develop a unified position and immediately contact Congressmen. (Caveat is that Tribes had actively sought AIPRA and its implementation.)

2. The other issues discussed included:
 - a. Limiting or amending the purchase at probate option – 25 USC 2206 (p),

- b. Changing the definition of “land” to clarify the application to permanently affix improvement – 25 USC 2201(7),
- c. Allowing holders on Indian trust lands to do wills – 25 USC 372,
- d. Technical amendment to address 25 USC 373 which provides that upon a fraud in the procurement or execution of a will, the property will pass through state law rather than through AIPRA or a tribal probate code,
- e. Clarify that spouse may receive mineral interests from a less than 5% interest that the spouse does not live on and thus, does not get a life estate on.

These issues may likely be addressed by technical corrections. DOI has concerns regarding these provisions and is will likely support revisions.

All parties on the conference call agreed that a discussion with DOI needed to occur as soon as possible regarding their support for a delay in implementation. John Dossett agreed to contact Michele Singer about a meeting date to discuss the delay request and the technical amendments. John will also provide notification of a follow-up phone call.